
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

BRACO, LLC)	
Petitioner,)	Petition Nos.: 49-930-08-1-4-05065
)	
)	Parcel No.: 9007498
v.)	
)	
MARION COUNTY ASSESSOR,)	County: Marion
)	
Respondent,)	Township: Wayne
)	
)	Assessment Year: 2008

**FINAL DETERMINATION GRANTING MARION COUNTY ASSESSOR'S
MOTION FOR SUMMARY JUDGMENT**

I. Introduction

1. The undisputed evidence shows that the attorney for the Petitioner, Braco, LLC, gave the Marion County Assessor a signed a document withdrawing Braco's appeal, although neither party actually filed that withdrawal with the Board until the Assessor designated it in connection with his motion for summary judgment. Because Braco has not designated any evidence to dispute that it authorized the withdrawal, we grant the Assessor's motion and dismiss the appeal.

II. Procedural History Before the Board

2. On April 10, 2013, Braco filed a Form 131 petition with the Board. Our designated administrative law judge, David Pardo, set the appeal for a status conference on June 6,

2016. He noted that the Board had been informed (in a different case) that Braco's attorney, Thomas Hendrickson, might no longer be practicing law. He therefore set the conference to (1) determine whether Braco would continue to be represented, either by Hendrickson or by substitute counsel, or would instead proceed *pro se*; and (2) set a hearing date. The Board served the order scheduling the conference separately on Hendrickson and on Braco.¹ Braco did not appear at the conference, either through a member or by counsel. No attorney besides Hendrickson has entered an appearance for Braco.

3. On July 26, 2016, the Assessor filed his summary judgment motion and designated the following materials:

Exhibit A: Braco's Form 131 Petition;

Exhibit B: Affidavit of Gregory A. Dodds, including the following exhibits:

Exhibit 1: Tax Agreement;

Exhibit 2: Document withdrawing the 2008 appeal for the subject property, signed by Hendrickson on June 19, 2013;

Exhibit 3: Series of e-mails between Hendrickson and Dodds;

Exhibit 4: Form 134 report for appeal of the 2007 assessment.

4. The Assessor served his motion for summary judgment on both Braco and Hendrickson. There was no response.

III. Undisputed Facts

5. Gregory Dodds, the Assessor's commercial valuation specialist, e-mailed Hendrickson about Braco's appeals for 2007 and 2008. On June 6, 2013, Hendrickson responded by asking Dodds to make an offer that he could present to his client. *Dodds Aff. at ¶ 12, Ex.3.*

¹ In completing the Form 131 petitions, Hendrickson left the space provided for the taxpayer's address blank. The Board therefore used the address listed on an attachment to Braco's Form 131 petition. The Board has sent two orders to Braco at that address. Neither was returned.

6. Dodds then e-mailed Hendrickson with an offer to reduce the 2007 assessment to \$72,500—the amount Braco sold the property for in July 2008. Dodds also indicated that because Braco sold the property in 2008, the appeal for that assessment year was moot and should be withdrawn. Hendrickson responded that he did not represent the buyers, but that attachments to Braco’s Form 130 petition included a settlement statement from the sale and the buyers’ assignment of any tax refund to Braco. Dodds thanked him for the response. *Dodds Aff. at ¶¶ 11-12, Ex. 3.*

7. On June 11, 2013, Hendrickson notified Dodds via email that Braco accepted the offer and that he would sign any necessary paperwork at the County Assessor’s Office. Eight days later, on June 19, 2013, Hendrickson signed a withdrawal of the 2008 appeal. The withdrawal was on a form with the Marion County Property Tax Assessment Board of Appeals (“PTABOA”) listed at the top. He also signed a Form 134 report indicating that the parties agreed to an assessment of \$72,200 for 2007. *Dodds Aff. at ¶¶ 10-12, Exs. 2-4.*

IV. Discussion

8. Our procedural rules allow summary judgment motions, which are made “pursuant to the Indiana Rules of Trial Procedure.” 52 IAC 2-6-8. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party moving for summary judgment must make a prima facie showing of both those things. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). It is not enough for a movant to show an opponent lacks evidence on a necessary element of its claim; instead, the movant must affirmatively negate the opponent’s claim. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings, but rather must designate sufficient evidence to show that a genuine issue exists for trial. *Id.* In deciding whether a genuine

issue exists, we must construe all facts and reasonable inferences in favor of the non-movant. *See Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).

9. The Assessor argues that Hendrickson withdrew Braco's appeal of the 2008 assessment. We agree. Although the withdrawal is on a form with the PTABOA's name at the top, Braco had already filed a Form 131 petition with the Board. There was nothing left in front of the PTABOA to withdraw at that point. Thus, the withdrawal had to refer to the appeal before us.

10. While neither Braco nor the Assessor previously filed the withdrawal with the Board, that document is now properly before us in connection with the Assessor's summary judgment motion. Braco does not dispute that Hendrickson withdrew the appeal on its behalf. Indeed, Braco did not respond the summary judgment motion at all. In light of Braco's withdrawal, there is no live controversy for us to resolve.

V. Final Determination

11. Because there is no live controversy for us to resolve, we grant the Assessor's motion for summary judgment and dismiss the appeal.

Dated: January 11, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice.

The Indiana Code is available on the Internet <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/juciciary/rules/tax/index.html>>.

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